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Attorneys for Defendant Elaine Chao, Secretary of Labor

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RICHARD GAYTAN,)	No. C 07-6367 VRW
)	
Plaintiff,)	
)	
v.)	DEFENDANT'S CASE MANAGEMENT
)	CONFERENCE STATEMENT
ELAINE CHAO, Secretary of Labor,)	
)	Date: July 10, 2008
Defendant.)	Time: 3:30 p.m.
)	Hon. Vaughn R. Walker

Defendant Elaine Chao, Secretary of Labor, by and through her counsel, hereby submits the following Case Management Conference Statement pursuant to Civil Local Rule 16-9.

Earlier this week counsel for Defendant spoke to Plaintiff by telephone and e-mailed him a draft of this statement. Based on an ambiguous e-mail response, counsel for Defendant believes that the contents of this document are acceptable to Plaintiff. Counsel for Defendant was not able to reach Plaintiff by telephone for clarification prior to this filing, but will endeavor to speak with Plaintiff prior to the Conference. Plaintiff and Defendant have agreed to mediate the case.

1. Jurisdiction and Service: This case involves a claim for alleged discrimination in employment in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., over which

C 07-6367 VRW
 DEFENDANT'S CASE MANAGEMENT CONFERENCE STATEMENT

1 this court has jurisdiction pursuant to 28 U.S.C. § 1331. This case also includes claims that the
2 Veterans Judicial Review Act of 1988 (“VJRA”) is unconstitutional. Defendant does not contest
3 personal jurisdiction, service or venue. Defendant was finally served on June 30, 2008 and will
4 file a responsive pleading within 60 days of that date.

5 2. Facts: Plaintiff alleges that he was terminated from his employment with the United
6 States Department of Labor’s Office of Federal Contract Compliance Programs on or about
7 September 27, 2007 in violation of the Rehabilitation Act of 1973 and that his supervisors
8 engaged in a pattern of discriminatory actions against him prior to his termination. Plaintiff also
9 alleges that the VJRA is unconstitutional in several respects.

10 Defendant denies that it discriminated against Plaintiff or otherwise engaged in any
11 wrongful action in the termination of Plaintiff or in any other respect. Defendant further denies
12 that the VJRA is unconstitutional in any respect.

13 3. Legal Issues: Whether or not Plaintiff can meet his burden to prove each of the elements
14 of his claim for violation of the Rehabilitation Act of 1973? Whether or not Plaintiff has
15 standing to bring claims alleging that the VJRA is unconstitutional? Whether or not Plaintiff can
16 bring a claim that the VJRA is unconstitutional against the Secretary of Labor? Whether or not
17 Plaintiff can meet his burden of proving that any element of the VJRA is unconstitutional?

18 4. Motions: Defendant intends to bring a motion to dismiss the claims regarding the VJRA.
19 Defendant intends to move for summary judgment after conducting some discovery. At this time
20 Defendant does not anticipate any other motions.

21 5. Amendment of Pleadings: None at this time.

22 6. Evidence Preservation: Defendant has taken affirmative steps to preserve documents and
23 evidence related to this action.

24 7. Disclosures: Defendant proposes to serve initial disclosures on or before the date of the
25 filing of its responsive pleading

26 8. Discovery: Defendant does not believe that any changes to the discovery limits or
27 procedures are necessary or appropriate at this time.

28 C 07-6367 VRW

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- 1 9. Class Actions: Not applicable.
- 2 10. Related Cases: None.
- 3 11. Relief:
- 4 Plaintiff: Plaintiff seeks to recover \$5,000,000.00 per cause of action.
- 5 Defendant: Defendant seeks dismissal of this action and the assessment of costs.
- 6 12. Settlement and ADR: The parties request an order referring this case to the Court's ADR
- 7 office for the appointment a mediator.
- 8 13. Consent to Magistrate Judge for All Purposes: Defendant does not consent to have this
- 9 matter heard by a magistrate judge for all purposes.
- 10 14. Other References: Defendant does not believe that this case is appropriate for binding
- 11 arbitration, a special master or reference to the MDL panel.
- 12 15. Narrowing of Issues: None at this time.
- 13 16. Expedited Schedule: Defendant does not request an expedited schedule.
- 14 17. Scheduling: Defendant requests that the Court enter an order with the following schedule:
- 15 Fact Discovery Cut-Off: February 27, 2009
- 16 Expert Disclosures: February 13, 2009
- 17 Rebuttal Expert Disclosures: March 13, 2009
- 18 Last Day for Expert Discovery April 18, 2009
- 19 Dispositive Motion Hearing Date: May 15, 2009 at 2:30 p.m. or such other date chosen
- 20 by the Court
- 21 Pre-Trial Conference: April 2009, on a date to be chosen by the Court
- 22 Trial: The last two weeks of May 2009 or the first two weeks of June 2009, on a date to
- 23 be chosen by the Court.
- 24 18. Trial: Plaintiff has requested a trial by jury. Defendant estimates that a trial would take no
- 25 more than 5 court days on the assumption that there would be no trial on the constitutionality of
- 26 the VJRA.
- 27 19. Disclosure of Non-party Interested Entities or Persons: Civil L.R. 3-16 does not apply to the
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C 07-6367 VRW

DEFENDANT'S CASE MANAGEMENT CONFERENCE STATEMENT

1 Defendant by the terms of that rule.

2 Dated: July 3, 2008

3 Respectfully submitted,

4 JOSEPH P. RUSSONIELLO
5 United States Attorney

6 By: /s/
7 MICHAEL T. PYLE
8 Assistant United States Attorney
9 Attorney for Defendant
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C 07-6367 VRW

DEFENDANT'S CASE MANAGEMENT CONFERENCE STATEMENT